



## HUMAN RESOURCES OFFICE BULLETIN

ISSUED BY: HUMAN RESOURCES OFFICE JACKSONVILLE

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### EEOC REVISED REGULATIONS FOR THE FEDERAL SECTOR EEO PROCESS

On 9 November 1999 the Equal Employment Opportunity Commission's (EEOC) regulations revising the federal sector Equal Employment Opportunity (EEO) process become effective. All new and pending civilian EEO matters will be processed under the new procedures on and after this date. The following is a synopsis of the changes:

#### FILING COMPLAINTS

Complainants may amend a complaint at any time before the investigation is finished to include issues or claims that are like or related to the complaint. In addition, after requesting a hearing, a complainant may ask the EEOC Administrative Judge (AJ) for this amendment option.

#### DISMISSALS

Agencies may no longer dismiss complaints for failure by the complainant to accept a certified offer of full relief.

Two new bases for dismissal have been added:

- 1) Allows for dismissal of complaints that allege dissatisfaction with the processing of previously filed complaints, and
- 2) Allows for dismissal of complaints for abuse of the EEO process.

Interlocutory appeals of partial dismissals have been eliminated; the case will continue to be processed and appeals will be preserved until any other matters in the case are ready for appeal.

#### INVESTIGATIONS

An investigation is to be completed within the earlier of these 2 dates: (a) 180 days after the date the complaint or the last amendment was filed OR (b) 360 days after the date the original complaint was filed.

Complainants send their requests for a hearing directly to EEOC with a copy to the agency.

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## **EEOC HEARINGS**

An agency may make an “offer of resolution” to the complainant before an EEOC hearing is held. If the complaining party does not accept the offer and ultimately obtains no more relief than what was offered, no attorney’s fees or costs will be payable for work done after the offer was not accepted.

An AJ will no longer remand issues to agencies for counseling or other processing. Once a case is before an AJ, the AJ is fully responsible for processing it.

An AJ may dismiss a complaint.

An AJ will issue a decision within 180 days after receiving the complaint file from the agency. If the agency does not issue a final order within 40 days after receiving the AJ’s decision and hearing file, the decision becomes the final action of the agency.

An AJ will evaluate the agency’s dismissal determinations. If the AJ believes that the agency’s reasons are not well taken, the portions not meeting the standards for dismissal will continue in the hearing process.

## **FINAL AGENCY ACTIONS**

An agency must issue a final order within 40 days after receiving the AJ’s decision and hearing file. The order must state whether or not the agency will fully implement the decision. If the order states that the agency will not fully implement the decision, the agency must file an appeal with EEOC at the same time it issues its final order.

Where there is no decision by an AJ – in dismissals or where a complainant did not request a hearing – the agency is to take final action on a complaint by issuing a final decision. The final decision must address all claims in the complaint, including the rationale for any dismissals and/or findings on the merits. The agency must issue a final decision within 60 days of the complainant’s request for an immediate decision from the agency.

## **CLASS COMPLAINTS**

A class complainant may now move for class certification at any reasonable point in the process, usually no later than the conclusion of discovery. This recognizes that complaining parties do not have access to discovery until they are before an AJ and, therefore, may not have sufficient information when they file their case to determine whether or not class issues are raised.

AJ decisions regarding class certification will be treated the same way as other AJ decisions. Agencies will take final action on certification by issuing a final order and, if it does not fully implement the AJ decision, appealing to EEOC.

## **APPEALS**

An agency may appeal a decision by an AJ on an individual complaint within 40 days from receipt of the AJ’s decision; if the agency chooses not to implement the decision, it has another 20 days to file the appeal brief.

The Office of Federal Operations (OFO) will draw an adverse inference or take other evidentiary action where either party fails, without good cause, to comply with appellate provisions.

OFO will accept briefs of 10 pages or less via fax.

EEOC in its discretion may grant reconsideration. The requesting party must show: (1) clearly erroneous interpretation of material fact or law; or (2) substantial impact on the policies, practices, or operations of the agency.

## **REMEDIES AND RELIEF**

The agency, AJ or EEOC may award fees and costs.

An AJ is authorized to determine the amount (not just entitlement) of attorney's fees.

Fees and costs are payable for work performed during the pre-complaint process where the EEOC affirms an AJ's finding that an agency has not implemented. At the same time, agencies and complaining parties may include attorney's fees for pre-complaint work in a settlement agreement.

## **INTERIM RELIEF**

Where an AJ orders retroactive restoration (in limited circumstances – removal, separation, or suspension continuing beyond the date of the order) and the agency appeals, the agency must provide temporary or conditional restoration.

The agency may decline to return the complainant to the workplace on the grounds that the return would be unduly disruptive, but prospective pay and benefits must still be paid until the appeal is completed. The agency is not required to pay any other monetary benefit ordered by the AJ pending the outcome of the appeal but must pay the interest on such sum if the complaining party ultimately prevails.

If the agency has not provided interim relief when it files an appeal, the complainant may request dismissal of the appeal.

## **JOINT PROCESSING AND CONSOLIDATION**

Two or more complaints filed by the same complainant must be consolidated by the agency for joint processing. The date of the last filed complaint controls the time frames for processing.

## **ALTERNATIVE DISPUTE RESOLUTION (ADR)**

Agencies must offer ADR option(s) during both the pre-complaint and formal complaint process. **Unlike the other changes in the revised regulations, this requirement does not go into effect until 1 January 2000.**

For further information or to arrange a briefing on these changes, please contact John Vickers at (904)542-2297 or Cindy Glenn at (904)542-2282.